

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

C/A: 2:10-0317-DCN

Larry E. Sherfey,	)	
	)	
Plaintiff,	)	
	)	<b><u>Plaintiff's Motion to Remand and Supporting</u></b>
vs.	)	<b><u>Memorandum</u></b>
	)	
Big Red, Inc.	)	
	)	
Defendant.	)	
_____	)	

Pursuant to 28 U.S.C. §1441(b) and the Federal Rules of Civil Procedure, Plaintiff in the above-entitled action hereby moves this Court for an Order remanding the action to the Court of Common Pleas for the County of Charleston, State of South Carolina (the action was originally commenced in the Court of Common Pleas as Civil Action No. 2010-CP-10-737). Defendant removed the action pursuant to diversity of citizenship jurisdiction under 28 U.S.C. §1332(a). See Paragraph 4 of Notice of and Petition for Removal.

Plaintiff is a citizen of Tennessee and Defendant admitted in the Notice of and Petition for Removal that Defendant “is a corporation organized and existing under the laws of the State of South Carolina, with a principal place of business in North Charleston, South Carolina.” Id. at Paragraph 2. As such, under 28 U.S.C. §1441(b), the action may not be removed to federal court. Specifically, 28 U.S.C. §1441(b) provides that an action between citizens of different states “shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which

such action is brought.” Because Defendant is a citizen of the State of South Carolina, the action is not removable to federal court.

For the foregoing reasons, Plaintiff hereby requests that this Court issue an Order remanding the action to the Court of Common Pleas for the County of Charleston, State of South Carolina.

Respectfully submitted,

s/Christopher J. McCool  
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Attorneys for Plaintiff

North Charleston, South Carolina  
This 8<sup>th</sup> day of March, 2010.

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing instrument was served on the Court and all counsel of record in compliance with the Federal Rules of Civil Procedure this 8<sup>th</sup> day of March, 2010.

s/Christopher J. McCool